

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2976 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT LEATHER INDUSTRIES LTD

Versus

ABDULSATTAR GULAMRASUL SHAIKH

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Appearance:

MR KIRAN C RAVAL for Petitioner

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/07/1999

ORAL JUDGEMENT

Notice of this writ petition was issued to the respondent vide order dated 21.4.1999. The record shows that the notice was served on the respondent on 16.5.1999. The returnable date was on 16.6.1999 but none appeared on behalf of the respondent on that date. Hearing was adjourned to 1.7.1999. Again on 1.7.1999 none appeared from the side of the respondent and it was adjourned to 10.7.1999. 10.7.1999 being second Saturday

and 11.7.1999 being Sunday it has come up for hearing today i.e. 12.7.1999.

2. After hearing the learned counsel for the petitioner, I feel that the petition can be finally disposed of at the admission stage more particularly when the respondent has not appeared despite service of notice.

3. Through this petition the petitioner has prayed for quashing of the award dated 21.1.1999 passed by the Labour Court, Bharuch, in Reference No. 47/90 contained in Annexure-E to the writ petition.

4. The brief facts are that the respondent was a permanent worker employed by the petitioner on 16.6.1981 on monthly salary of Rs. 461.50 ps. as helper in dyes section of the petitioner's Company. He was dismissed from service on 15.1.1985 in view of his written and signed resignation tendered to the Manager of the petitioner's Company. The respondent however took a stand that he was dismissed illegally with effect from 1.1.1985 without conducting any domestic enquiry and without giving him an opportunity of hearing and further that neither one month's notice was given nor salary in lieu of one month's notice was paid to him. Industrial dispute was raised which was referred to the Labour Court. The dispute was contested by the petitioner in which it was denied that the resignation was involuntary. It was clear stand of the petitioner before the Labour Court that voluntary resignation was tendered by the respondent in his own handwriting and under his signature on 15.1.1985 which was accepted on the same date and the respondent was relieved from his duties in pursuance of the aforesaid resignation letter. It was further stand of the petitioner that since the respondent tendered resignation there was no question of conducting any disciplinary or domestic enquiry against the respondent nor was there any requirement for issuing any show cause notice or giving opportunity of hearing or for paying one month's salary in lieu of notice period.

5. The Labour Court in its award repelled the stand of the petitioner and found that the termination of service of the respondent was illegal. Consequently, reinstatement of the respondent with 70 per cent backwages together with cost of Rs. 250/- was awarded. It is this order which is challenged in this writ petition.

6. After going through the annexures filed in this

writ petition and the impugned award, it appears clear that the Labour Court has given the award on mere surmises and conjectures ignoring the statement of claim raised by the respondent and also the effect of the letter of resignation and subsequent stand taken by the respondent that the resignation was involuntary. The Labour Court was also in apparent error in placing reliance upon some Standing Order which has not been quoted in the award of the Labour Court and on the basis of such presumed Standing Order the Labour Court found that it was obligatory for the employer, namely, the petitioner to wait for a period of 30 days so that the poor workman might have cooled down and he might not have been deprived of his bread, namely, services. Such presumptive award is not only contrary to the material on record but proceeds on the basis of surmises and conjectures hence it cannot be sustained.

7. Annexure-A is the statement of claim of the respondent in which he admitted that he was permanent worker drawing salary of Rs. 461.50 ps. If this was so and if this stand was not controverted by the petitioner then in view of Rule 23(5) of the Bombay Industrial Employment Rules, 1959, there was no obligation on the part of the employer to wait for a period of 30 days after resignation was tendered by the employee. Sub-section (5) of Rule 23 aforesaid reads as under:-

"Save as otherwise provided in these Standing Orders, a permanent workman employed on the monthly rates of wages, desirous of leaving the service shall give in writing one month's notice to the Manager of his intention to do so."

8. A plain reading of this sub-section shows that the obligation was on the employee to give one month's notice to the Manager showing his intention of leaving services, namely, his intention of resigning from services. This sub-clause does not cast any obligation on the employer to wait for a period of one month or 30 days as the case may be and then accept the resignation.

9. Annexure-C is the translated copy of the resignation letter tendered by the respondent on 15.1.1985. Even the Labour Court has observed that it was written in the handwriting of the respondent and was signed by him. A plain reading of this resignation letter shows that it was voluntary and was not the result of any inducement, threat or coercion. The sentence "I am unable to work in your Company, and therefore, I am willingly tendering my resignation" makes it clear and

speaks loudly that the resignation was voluntary and not involuntarily obtained under threat or coercion. The Labour Court on mere presumption observed that since the employer did not wait for a period of one month and relieved the respondent on the same day i.e. on 15.1.1985 it was suspicious circumstance rendering the termination order invalid. Needless to say that sea of suspicion has no shore. There was no occasion for the Labour Court to draw such suspicion. It was for the employee, namely, the respondent to establish that the resignation letter was got written in a closed room by the Manager in presence of one employee. There is no evidence on this point except a belated stand taken by the employee, namely, the respondent in the witness-box after a period of six years on 28.8.1991. Even in his statement of claim it was not asserted that the resignation was tendered under compulsion or threat. The only thing contained in the statement of claim Annexure-A is that the petitioner was dismissed on 1.1.1985 in an unjustified and unlawful manner. This statement also seems to be subsequent thought because the resignation was tendered on 15.1.1985 and in order to make out the case that the termination order was illegal that imaginary date of termination dated 1.1.1985 was chosen by the respondent. It is also difficult to believe that oral order of termination would have been passed on 1.1.1985. Even if for a moment it is believed that some domestic enquiry was under contemplation of the employer, there was no reason why the employer could not have chosen to constitute disciplinary enquiry and why the petitioner would have chosen such short cut manner to relieve the respondent from his job. Removal of the respondent from job after awarding punishment in the departmental enquiry could have been more harsh for the respondent and as such the employer if it was against the respondent, could have chosen that course and not that it would have obtained involuntary resignation from the respondent. Moreover, there is no clinching evidence from the side of the respondent that the resignation was obtained by the Manager by force as no police case was registered. Consequently, the assertion of the respondent that on the threat given by the Manager that he would be involved in a police case if he does not tender resignation does not appear to be acceptable. The second stand of the respondent is that he was promised by the Manager that in case resignation is given he would be given other better employment. This stand is also hypothetical and imaginary which cannot be accepted by any reasonable man. It appears from the award that the Labour Court has given two reasonings for holding that the resignation was not voluntary. The first reasoning

is that on mere surmises and conjectures, suspicion has been drawn without any foundation and without any material on record for coming to the conclusion that the termination order was involuntary. The second stand is that there were sufficient circumstances and reasons to believe that the employer had used improper influence and pressurised the applicant, namely, the respondent for submitting resignation. These circumstances are also imaginary and are neither supported from the material on record nor from the Standing Orders or any other circular quoted by the Labour Court.

10. The Labour Court has also emphasised that the employer has not issued any letter accepting the resignation. If the resignation was tendered personally by the respondent and it was accepted on the same date in his presence, there was no necessity for the employer to send written intimation subsequently that the resignation was accepted.

Thus, for the reasons stated above, the impugned award was passed on mere surmises and conjectures and is patently contrary to law, hence it cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The impugned award dated 21.1.1999 contained in Annexure-E to the petition is hereby quashed. No order as to costs.

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